



Overview of The Brown Act

Advisory Boards and Commissions

Citizens' Revenue Review and Economic
Competitiveness Commission

December 22, 2009



The Brown Act - Overview

- The Act is intended to ensure that deliberations and actions of local agency legislative bodies are open and public and that there is meaningful public access to their decisionmaking



The Brown Act - Overview

- The Act requires that meetings be open to the public, held on a regular schedule, and conducted in accordance with an agenda available in advance of the meeting
- Meetings must be open unless there is a specific section in the Act that permits a closed session



Who is Subject to the Brown Act?

- “Legislative bodies” including advisory committees created by ordinance of the San Diego City Council
- Committee members, from time of appointment
- Subcommittees created by formal action of the advisory committee
 - But not temporary ad hoc advisory committees made up solely of committee members and constituting less than a quorum



What Constitutes a Meeting?

- A “meeting” is any congregation of a majority of the members at the same time and place to hear, discuss, deliberate or take action on any item that is within the subject matter jurisdiction of the committee.



What Constitutes a Meeting?

- “Hear, discuss, deliberate or take action on any item”
- Significant broadening of the definition – mere “discussion” is sufficient to constitute a violation
 - No longer requires participants to develop a “collective concurrence”



Serial Meetings Not Allowed

- A majority of the members shall not, outside a meeting authorized by the Brown Act, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the committee.



Serial Meetings Not Allowed

- “Serial” communications
 - “A to B” and “B to C”
- E-mail communications
 - A majority cannot e-mail each other to discuss topics before the committee

What is Not a “Meeting”?

- Individual contacts between a committee member and another person
 - A majority of the members attending a:
 - Conference open to the public
 - Local public meeting
 - Open meeting of another body
 - Social or ceremonial event
- But, a majority of the members may not discuss committee matters among themselves at these events



Public Contacts

- Communication with a member of the public does not violate the Act (but may raise due process issues for quasi-judicial matters)
- If an individual contacts a quorum of the committee, the members should not respond outside public meeting – deliberations should occur in public
- One-way transmission of background materials and solitary review by committee members would not violate Act



When Can Meetings Be Held?

- Regular meetings:
Agenda posted 72 hours before
- Special meetings:
Called by chair or majority of committee members, agenda posted 24 hours before
- Emergency meetings:
Immediately, must be a real emergency, such as a situation that impairs public health, safety or both



Where Can Meetings Be Held?

- Within the boundaries of the City, unless a specific exemption applies
- Meetings must be accessible under the Americans with Disabilities Act of 1990



Agenda Descriptions

- Brief general description of each item (less than 20 words)
- Include the date, time and location of the meeting
- Must inform public of scope of the committee's intended plans so public can decide whether to participate
- Must be posted in a location "freely accessible to members of the public"



Consideration of Matters Not on the Meeting Agenda

■ Only if:

- ☐ Majority vote determines an “emergency situation” exists (an activity that impairs public health, safety, or both)
- ☐ Two-thirds vote determines the need to take immediate action occurred after agenda was posted (rarely used)




Public Right to Comment

- Regular meeting
 - Public may comment on any matter within the committee's subject matter jurisdiction even if not on the agenda (non-agenda public comment)
 - Public also must be allowed to comment on agenda items
 - Reasonable regulations, including time limits may be adopted



Public Right to Comment

- Committee must allow criticisms and complaints
- Public comments are made before action is taken
- Special meeting
 - Comments must be allowed on agenda items
 - Committee may allow non-agenda comment, but not required



Limited Response to Public Comment on Items Not on Agenda

- May make a brief response to statements or questions permitted, but no discussion or action
- May briefly announce or report on member's own activities
- May ask questions for clarification
- May refer the matter to staff for:
 - ☐ Information
 - ☐ Request to report back
 - ☐ Direct to place matter on a future agenda



Public Right to Attend

- Public cannot be required to register their names or provide other information as a condition of attending meeting
 - Voluntary sign-in is allowed
 - Unclear whether public can be required to provide names and other information to participate unless necessary to the subject matter



Public Right to Attend

- Public has a right to record the meeting with an audio or video tape recorder, or take photographs
- Public has a right to review agendas and other writings distributed to a majority of the committee members



Violations of Brown Act

■ Civil Actions

- ☐ Any interested party may begin action
- ☐ Committee will have opportunity to cure and correct actions taken
- ☐ With judgment, action is void, with certain exceptions
- ☐ Costs & attorney fees may be awarded

■ Criminal penalties

- ☐ With intent to deprive public of information
- ☐ Guilty of a misdemeanor



Overview

- All meetings shall be open and public
- Actions and deliberations must be taken openly
- All persons shall be permitted to attend and participate in the meetings

Questions?

